

*** Human Services; Child Welfare Services; Definitions;

Harm, Injury, and Abuse***

Sec. 6. 33 V.S.A. §4912 is amended to read

§4912 DEFINITIONS

As used in this subchapter:

(6) "Harm" can occur by:

(A) Physical injury or emotional maltreatment.

(B) Failure to supply the child with adequate food, clothing, shelter, or health care. As used in this subchapter, "adequate health care" includes any medical or nonmedical remedial health care permitted or authorized under State law. Notwithstanding that a child might be found to be without proper parental care under chapters 51 and 53 of this title, a parent or other person responsible for a child's care legitimately practicing his or her religious beliefs who thereby does not provide specified medical treatment for a child shall not be considered neglectful for that reason alone.

(C) Abandonment of the child.

DCF Explanation: The Department respectfully proposes to remove the language in the new proposed paragraph (D) added in S.9 that defines harm as exposure to the unlawful possession, use, manufacture, cultivation or sale of the list of regulated drugs specified in S.9. We agree that we need to clarify what constitutes harm to a child, particularly around the use of illegal substances.

The National Center on Substance Abuse and Child Welfare has recommended that the use of substances is tied to the behavior of the parent when defining harm and whether the parent is able to appropriately care for the child. The Department does not support the concept that all exposure to substances equates to a finding of child abuse. This language is overly broad and has the potential to deter parents and guardians from seeking treatment.

The Department recommends that language from our current regulations regarding substance abuse, including alcohol, is incorporated into the statutory definition of risk of harm (please see below).

(11) "Physical injury" means death or permanent or temporary disfigurement or impairment of any bodily organ or function by other than accidental means.

DCF Explanation: The Department respectfully proposes retaining the current definition of physical injury in 33 V.S.A. §4912(11). The current definition excludes accidents and includes death of a child, which is not included in the definition proposed by S.9.

The Department does not support the proposed definition in S.9 that defines "physical injury" as "bodily injury or serious bodily injury as defined in 13 V.S.A. §1021", which refers to criminal code. The term "bodily injury" in the criminal code is very broad and includes "physical pain, illness, or any impairment of physical condition". This language does not exclude accidents and will result in many families receiving inappropriate intrusion by the child protection agency into their private family lives. This language also defines all corporal punishment as child abuse.

The proposed language to include the criminal definition of "bodily injury" may have the unintended consequence of deterring parents from seeking medical treatment for their children when there has been an injury, even an accidental one, as parents may fear being substantiated for child abuse under the language proposed by S.9.

Finally, the Department does not support the concept of uniformity in all Vermont statutes that define harm to children as different statutes have different purposes. Chapter 49 of Title 33 is the statute that defines child abuse and neglect for the purpose of placing someone on the Child Protection Registry, which is meant to protect children from harm generally and could have an impact on the employment opportunities for people who work with children who have also been substantiated. This is a different concept than criminal statutes, which are meant to punish and/or deter crime. The statutes in Title 33, Chapters 51 and 53 address children who may need care or supervision and when children can be taken away from a parent's custody.

(14) "Risk of harm" means a significant danger that a child will suffer serious harm other than by accidental means, ~~which harm would be likely to cause physical injury, neglect, emotional maltreatment, or sexual abuse.~~ Risk of harm includes but is not limited to:

(A) a single, egregious act that resulted in significant risk that a child could have been seriously physically injured, including production or pre-production of methamphetamines in a dwelling where a child resides;

(B) being absent and not arranging for a child to be supervised in a manner appropriate to the child's age and circumstances;

(C) not providing developmentally appropriate supervision or care for a child due to use of illegal substances, misuse of prescription drugs or alcohol;

(D) not appropriately supervising a child in a situation in which drugs, alcohol or drug paraphernalia are accessible to the child;

(E) knowingly allowing a child to be at substantial risk of sexual abuse;

(F) failure by a registered sex offender or person substantiated for sexually abusing a child to refrain from residing with or spending unsupervised time with a child.

DCF Explanation: DCF proposes the definition above for “risk of harm”. The definition proposed in S.9 omits the words “significant” and “serious” and also omits reference to “other than by accidental means”. These changes proposed in S.9 substantially broaden the current definition and potential for placement on the Child Protection Registry. Also, the language for “risk of harm” in S.9 does not address the use of substances.

In our proposal above, we retain the language requiring “significant danger” and “serious harm” as well as “other than by accidental means”. We also incorporate in the definition the use of substances, including alcohol and prescription drugs, in cases when a parent or guardian is not able to provide age appropriate care for her or his child. Our proposal also includes situations when a parent allows a child access to drugs, alcohol or drug paraphernalia. These recommendations are in line with guidance we have received from the National Center on Substance Abuse and Child Welfare to tie the use of substances to the behavior of the parent and harm or potential for harm to the child.

Finally, we would like to note that DCF has also changed its practice and decision-making regarding opiate use and young children. We now accept all reports at intake involving alleged opiate use and children under three years of age.

(15) "Sexual abuse" consists of any act or acts by any person involving sexual molestation or exploitation of a child, including incest, prostitution, rape, sodomy, or any lewd and lascivious conduct involving a child. Sexual abuse also includes the aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts sexual conduct, sexual excitement, or sadomasochistic abuse involving a child. Sexual abuse also includes the viewing, possession or transmission of child pornography, excluding exchanges of images between mutually consenting minors.

DCF Explanation: DCF respectfully proposes to retain the current definition of "sexual abuse" found in 33 V.S.A. §4912(15), with one change relating to the viewing or possession of child pornography. This proposed addition to the definition of sexual abuse makes clear that the viewing, possession or transmission of child pornography is sexual abuse of a minor under Chapter 49. This definition excludes the exchange of sexual images between minors when both minors consent to the exchange.

DCF does not support the changes to the definition proposed in S.9, which incorporate the criminal definitions of various sexual crimes against children in the Chapter 49 definition. The changes proposed by S.9 narrow the cases in which the Department will be able to substantiate a person for sexual abuse of a child.

As discussed above in the definition of "physical abuse", it is the Department's position that the Chapter 49 definition of abuse may be appropriately different from the criminal definition. The Chapter 49 definition guides the Department in its investigations and substantiations of child abuse for the purpose of placing a person who has abused a child on the Child Protection Registry. If the definition of Chapter 49 sexual abuse is narrowed, the potential for future harm to children increases.

Under the current Chapter 49 definition, DCF is not required to prove sexual intent of the perpetrator. The focus is on the resultant sexual harm to the child victim. Using the criminal definitions proposed in S.9, sexual intent would need to be proved in order to substantiate.

Also, the criminal definition of sexual exploitation of minors (use of children in movies and images) is considerably narrower than how DCF defines sexual exploitation (taking unjust advantage of another person for one's own gain). The current DCF definition has been the basis for intervening in grooming-type situations.

Finally, DCF currently investigates sexual acts by one youth against another and sexual acts by adults who may not be "criminally competent". The change proposed by S.9 to tie definitions to the criminal statutes would eliminate DCF's ability to investigate these cases, which would narrow the scope of who may be substantiated and placed on the Child Protection Registry.